

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 82 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

GIRA R. PATEL

Appearance:

1. WEALTH TAX REFERENCE No. 82 of 1995
MR BB NAIK WITH MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 08/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the Income-tax Appellate Tribunal, Ahmedabad has referred the following question for our opinion in respect of assessment year 1986-87 :-

"Whether, the Appellate Tribunal is right in law and on facts in directing that valuation of the unquoted equity shares of Cadila group of companies be taken as per Rule 1D as interpreted by the Gujarat High Court in the case of Ashok K. Parikh, 129 ITR 46 ?"

2. We have heard Mr BB Naik, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention is invited to the decision of the Supreme Court in Bharat Hari Singhania vs. CWT, 207 ITR 1. In the said decision, the Supreme Court has laid down the following principles :-

"If in the case of the balance-sheet of the company the amount of tax paid, which is shown as an asset and has to be deducted from the value of the assets as required by clause (1)(a) of Explanation II to rule 1D, is also shown as a liability i.e. if that amount is included in the amount set apart as provision towards taxation, it would obviously have to be deleted from the column of liabilities - and this is also what clause (ii)(e) says. Clause (ii)(e) is in a sense complementary to clause (i)(a). The advance tax paid is not really an asset but the proforma of balance-sheet in Schedule VI to the Companies Act requires it to be shown as such. What clause (i)(a) does is to remove the said amount from the list of assets for the purpose of rule 1D. It is then that clause (ii)(e), which speaks of liabilities, says that only that amount which is still remaining to be paid shall be treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance-sheet, the amount of advance tax already paid is again shown as a liability, it will not be treated as a liability. This is the true function of both the sub-clauses."

The Supreme Court has thus impliedly disapproved the principles laid down by this Court in CWT vs. Ashok

K. Parikh, 129 ITR 46 on which the Tribunal had relied.

4. Following the aforesaid decision of the Supreme Court, we answer the question in the negative i.e. in favour of the revenue and against the assessee.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-